

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-140643
Plaintiff-Appellee,	:	TRIAL NO. B-1401253-A
vs.	:	<i>JUDGMENT ENTRY.</i>
TIMOTHY WILLIAMSON,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This is a criminal appeal of a conviction for breaking and entering following a jury trial. Timothy Williamson argues that he was deprived of the effective assistance of counsel, and that his conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. We affirm the judgment of the trial court.

Deputy Matthew Sewall responded to a 911 call reporting suspicious activity near Plas Plumbing (“Plas”). As he drove past Plas, Deputy Sewall saw movement and shined his cruiser’s spotlight into the premises where he saw the upper body of a person. He also saw the individual’s white shoes with silver reflective trim. When the individual ran, Deputy Sewall called for backup.

In response to Deputy Sewall’s call, Officer Ronnie Huff tracked rustling noises in a nearby neighborhood and found Williamson. After being apprehended, Mr. Williamson told Officer Huff that two other suspects were hiding at Plas in a red

van. Officer Hust relayed the information to Deputy Sewall, who found the other suspects. When Officer Huff brought Williamson back to Plas, Deputy Sewall noted that Williamson's shoes matched those he had seen earlier.

Deputy Sewall's partner, Deputy Joe Huddleston, testified that he informed Williamson of his *Miranda* rights while transporting him to the sheriff's substation. Mr. Williamson admitted that he had climbed the fence into Plas with the intent to steal as much copper and as many power tools as he could. After arriving at the substation, Deputy Sewall advised Williamson of his *Miranda* rights, and Mr. Williamson again admitted that he went over the fence into Plas with the intent to steal copper and power tools for scrap. The deputies stated that Williamson and the other two suspects signed forms acknowledging their *Miranda* rights, but the state was unable to produce the forms at trial.

At trial, Janet Louis, co-owner of Plas, confirmed that Williamson did not have permission to be on the property and that the vans on the property contained five to seven thousand dollars' worth of items such as power tools, copper pipe and copper fittings that could have been stolen.

Williamson's first assignment of error is that he was denied the effective assistance of counsel. He contends counsel failed to object to hearsay, elicited inculpatory testimony, neglected to renew a Crim.R. 29 motion for an acquittal and did not request that the jury be polled. To succeed on this claim, Mr. Williamson must show that his counsel's performance was deficient, and that, absent his counsel's errors, the result of the proceedings would have been different. *See Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 142, 538 N.E.2d 373 (1989). Mr. Williamson has not made such a showing.

Mr. Williamson contends that counsel should have objected to testimony about the 911 call that started Deputy Sewall's investigation. But an objection would

not have been successful as the 911 caller's statements were admissible as excited utterances. *See* Evid.R. 803(2). As for the other allegedly inadmissible hearsay—testimony about conversations between officers and about the contents of a police report—Mr. Williamson has not demonstrated the result of the trial would have been different had counsel objected. The substance of the statements had been admitted in other nonhearsay testimony.

Nor has Mr. Williamson met his burden with respect to counsel's cross-examination of Deputy Sewall. Mr. Williamson claims that counsel's questions elicited testimony that was prejudicial to his defense. Specifically, Mr. Williamson takes issue with counsel's questions about statements given by Williamson and the other suspects. It appears that counsel was attempting to raise doubt about Deputy Sewall's credibility as to whether the three men had admitted to breaking and entering at Plas. We will not second-guess reasonable trial strategy and therefore cannot conclude that trial counsel's cross-examination constituted deficient performance.

Mr. Williamson further argues that counsel was ineffective for failing to renew the Crim.R. 29 motion for an acquittal at the close of Williamson's case. As we discuss below, the state presented sufficient evidence to sustain Williamson's conviction, so even if counsel had renewed a Crim. R.29 motion for an acquittal, it would not have succeeded. Mr. Williamson has not shown that the result of the trial would have been different had counsel renewed the motion. Nor has he demonstrated that polling the jury would have changed the result of the trial. The first assignment of error is overruled.

In his second and third assignments of error, Mr. Williamson asserts that his conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. As to the sufficiency argument, our review of the record reveals that the state adduced substantial, credible evidence from which the jury

OHIO FIRST DISTRICT COURT OF APPEALS

could have reasonably concluded that the state had proved beyond a reasonable doubt the elements of breaking and entering. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. And in regard to the manifest-weight argument, our review of the entire record fails to persuade us that the jury clearly lost its way and created such a manifest miscarriage of justice that we must reverse Williamson's conviction and order a new trial. *See State v. Thompkins*, 78 Ohio St.3d 380, 386-387, 678 N.E.2d 541 (1997). It was for the jury to assess the witnesses' credibility. The second and third assignments of error are overruled.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., DEWINE and MOCK, JJ.

To the clerk:

Enter upon the journal of the court on June 26, 2015,
per order of the court _____.

Presiding Judge